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Ryoo Dental, Inc. d/b/a/ Ryoo Dental

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

RYOO DENTAL, INC. d/b/a RYOO )  
DENTAL, individually and on behalf of )  
all others similarly situated, )

Plaintiff, )

v. )

PRISTINE DENTAL SUPPLIES, INC. )  
d/b/a PRISTINE DENTAL SUPPLY, )  
MOSAMMAT PARVIN AKHTER )  
d/b/a PRISTINE DENTAL SUPPLY, )  
and MOHAMED SALAHUDDIN d/b/a )  
PRISTINE DENTAL SUPPLY, )

Defendants. )

**CLASS ACTION**  
**JUNK-FAX COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Ryoo Dental, Inc. d/b/a Ryoo Dental brings this class action under Rule 23 of the Federal Rules of Civil Procedure against Defendants for their violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (TCPA), and the regulations promulgated thereunder.

**JURISDICTION AND VENUE**

1. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227.



1 the wrongful acts and omissions, including the dissemination of the junk faxes  
2 addressed in this Complaint.

3 **THE FAX**

4 13. On or about October 16, 2014, Defendants, or someone acting on  
5 their behalf, used a telephone facsimile machine, computer, or other device to send  
6 to Plaintiff's telephone facsimile machine at (714) 333-1840 an unsolicited  
7 advertisement, a true and accurate copy of which is attached as **Exhibit A** (Fax).

8 14. Plaintiff received the Fax through Plaintiff's facsimile machine.

9 15. The Fax constitutes material advertising the quality or commercial  
10 availability of any property, goods, or services.

11 16. On information and belief, Defendants have sent other facsimile  
12 transmissions of material advertising the quality or commercial availability of  
13 property, goods, or services to Plaintiff and to at least 40 other persons as part of  
14 a plan to broadcast fax advertisements, of which the Fax is an example, or,  
15 alternatively, the Fax was sent on Defendants' behalf.

16 17. On information and belief, Defendants approved, authorized and  
17 participated in the scheme to broadcast fax advertisements by (a) directing a list  
18 to be purchased or assembled, (b) directing and supervising employees or third  
19 parties to send the faxes, (c) creating and approving the fax form to be sent, and  
20 (d) determining the number and frequency of the facsimile transmissions.

21 18. Defendants had a high degree of involvement in, actual notice of, or  
22 ratified the unlawful fax broadcasting activity and failed to take steps to prevent  
23 such facsimile transmissions.

24 19. Defendants created, made, or ratified the sending of the Fax and other  
25 similar or identical facsimile advertisements to Plaintiff and other members of the  
26 "Class" as defined below.

1           20. The Fax to Plaintiff and, on information and belief, the similar  
2 facsimile advertisements sent by Defendants, lacked a proper notice informing the  
3 recipient of the ability and means to avoid future unsolicited advertisements.

4           21. Under the TCPA and 47 C.F.R. § 64.1200(a)(4)(iii), the opt-out  
5 notice for unsolicited faxed advertisements must meet the following criteria:

6           (A) The notice is clear and conspicuous and on the first page of the  
7 advertisement;

8           (B) The notice states that the recipient may make a request to the  
9 sender of the advertisement not to send any future advertisements  
10 to a telephone facsimile machine or machines and that failure to  
comply, within 30 days, with such a request meeting the  
requirements under paragraph (a)(4)(v) of this section is  
unlawful;

11           (C) The notice sets forth the requirements for an opt-out request  
12 under paragraph (a)(4)(v) of this section

13           (D) The notice includes—

14               (1) A domestic contact telephone number and facsimile  
15 machine number for the recipient to transmit such a  
request to the sender; and

16               (2) If neither the required telephone number nor facsimile  
17 machine number is a toll-free number, a separate cost-free  
18 mechanism including a Web site address or e-mail  
19 address, for a recipient to transmit a request pursuant to  
such notice to the sender of the advertisement. A local  
telephone number also shall constitute a cost-free  
mechanism so long as recipients are local and will not  
incur any long distance or other separate charges for calls  
made to such number; and

20           (E) The telephone and facsimile numbers and cost-free mechanism  
21 identified in the notice must permit an individual or business to  
make an opt-out request 24 hours a day, 7 days a week.

22           22. The Fax and, on information and belief, Defendants' similar  
23 facsimile advertisements lacked a notice stating that the recipient may make a  
24 request to the sender of the advertisement not to send future advertisements to a  
25 telephone facsimile machine or machines and that failure to comply, within 30  
26 days, with such a request meeting 47 C.F.R. § 64.1200(a)(4)(v)'s requirements is  
27 unlawful.

1           23. The transmissions of facsimile advertisements, including the Fax, to  
2 Plaintiff, lacked a notice that complied with 47 U.S.C. § 227(b)(1)(C) and 47  
3 C.F.R. § 64.1200(a)(4)(iii).

4           24. On information and belief, Defendants faxed the same or other  
5 substantially similar facsimile advertisements to the members of the Class in  
6 California and throughout the United States without first obtaining the recipients'  
7 prior express invitation or permission.

8           25. Defendants violated the TCPA by transmitting the Fax to Plaintiff  
9 and to the Class members without obtaining their prior express invitation or  
10 permission and by not displaying the proper opt-out notice required by 47 C.F.R.  
11 § 64.1200(a)(4).

12           26. Defendants knew or should have known that (a) facsimile  
13 advertisements, including the Fax, were advertisements, (b) Plaintiff and the other  
14 Class members had not given their express invitation or permission to receive  
15 facsimile advertisements, (c) no established business relationship existed with  
16 Plaintiff and the other Class members, and (d) Defendants' facsimile  
17 advertisements did not display a proper opt-out notice.

18           27. Pleading in the alternative to the allegations that Defendants  
19 knowingly violated the TCPA, Plaintiff alleges that Defendants did not intend to  
20 send transmissions of facsimile advertisements, including the Fax, to any person  
21 where such transmission was not authorized by law or by the recipient, and to the  
22 extent that any transmissions of facsimile advertisement was sent to any person  
23 and such transmission was not authorized by law or by the recipient, such  
24 transmission was made based on Defendants' own understanding of the law or on  
25 the representations of others on which Defendants reasonably relied.

26           28. The transmissions of facsimile advertisements, including the Fax, to  
27 Plaintiff and the Class caused concrete and personalized injury, including  
28

1 unwanted use and destruction of their property, e.g., toner or ink and paper, caused  
 2 undesired wear on hardware, interfered with the recipients' exclusive use of their  
 3 property, cost them time, occupied their fax machines for the period of time  
 4 required for the electronic transmission of the data, and interfered with their  
 5 business or personal communications and privacy interests.

### 6 CLASS ACTION ALLEGATIONS

7 29. Plaintiff brings this class action on behalf of the following class of  
 8 persons, hereafter, the "Class":  
 9

10 All persons in the United States who on or after four years prior to the  
 11 filing of this action, (1) were sent by or on behalf of Defendants a  
 12 telephone facsimile message of material advertising the commercial  
 13 availability or quality of any property, goods, or services, (2) with  
 14 respect to whom Defendants cannot provide evidence of prior express  
 15 invitation or permission for the sending of such fax or (3) with whom  
 16 Defendants did not have an established business relationship, and (4)  
 17 the fax identified in subpart (1) of this definition (a) did not display a  
 clear and conspicuous opt-out notice on the first page stating that the  
 recipient may make a request to the sender of the advertisement not to  
 send any future advertisements to a telephone facsimile machine or  
 machines and that failure to comply, within 30 days, with such a request  
 meeting the requirements under 47 C.F.R. § 64.1200(a)(4)(v) is  
 unlawful, (b) lacked a telephone number for sending the opt-out  
 request, or (c) lacked a facsimile number for sending the opt-out  
 request.

18 30. Excluded from the Class are Defendants, their employees, agents,  
 19 and members of the judiciary.

20 31. This case is appropriate as a class action because:

21 a. Numerosity. On information and belief, based in part on review of  
 22 the sophisticated Fax and online research, the Class includes at least 40  
 23 persons and is so numerous that joinder of all members is impracticable.

24 b. Commonality. Questions of fact or law common to the Class  
 25 predominate over questions affecting only individual Class members, e.g.:

26 i. Whether Defendants engaged in a pattern of sending unsolicited  
 27 fax advertisements;  
 28

- 1           ii. Whether the Fax, and other faxes transmitted by or on behalf of
- 2           Defendants, contains material advertising the commercial
- 3           availability of any property, goods or services;
- 4           iii. Whether the Fax, and other faxes transmitted by or on behalf of
- 5           Defendants, contains material advertising the quality of any
- 6           property, goods or services;
- 7           iv. The manner and method Defendants used to compile or obtain
- 8           the list of fax numbers to which Defendants sent the Fax and
- 9           other unsolicited faxed advertisements;
- 10          v. Whether Defendants faxed advertisements without first
- 11          obtaining the recipients' prior express invitation or permission;
- 12          vi. Whether Defendants violated 47 U.S.C. § 227;
- 13          vii. Whether Defendants willfully or knowingly violated 47 U.S.C.
- 14          § 227;
- 15          viii. Whether Defendants violated 47 C.F.R. § 64.1200;
- 16          ix. Whether the Fax, and the other fax advertisements sent by or on
- 17          behalf of Defendants, displayed the proper opt-out notice
- 18          required by 47 C.F.R. § 64.1200(a)(4);
- 19          x. Whether the Court should award statutory damages per TCPA
- 20          violation per fax;
- 21          xi. Whether the Court should award treble damages per TCPA
- 22          violation per fax; and
- 23          xii. Whether the Court should enjoin Defendants from sending
- 24          TCPA-violating facsimile advertisements in the future.

25       c.    Typicality. Plaintiff's claim is typical of the other Class members'

26       claims, because, on information and belief, the Fax was substantially the

27       same as the faxes sent by or on behalf of Defendants to the Class, and

28       Plaintiff is making the same claim and seeking the same relief for itself and

all Class members based on the same statute and regulation.

d.    Adequacy. Plaintiff will fairly and adequately protect the interests

of the other Class members. Plaintiff's counsel is experienced in TCPA

class actions, having litigated many such cases, and having been appointed



1 class counsel in multiple cases. Neither Plaintiff nor its counsel has  
2 interests adverse or in conflict with the Class members.

3 e. Superiority. A class action is the superior method for adjudicating  
4 this controversy fairly and efficiently. The interest of each individual Class  
5 member in controlling the prosecution of separate claims is small and  
6 individual actions are not economically feasible.

7 32. The TCPA prohibits the “use of any telephone facsimile machine,  
8 computer or other device to send an unsolicited advertisement to a telephone  
9 facsimile machine.” 47 U.S.C. § 227(b)(1).

10 33. The TCPA defines “unsolicited advertisement,” as “any material  
11 advertising the commercial availability or quality of any property, goods, or  
12 services which is transmitted to any person without that person’s express  
13 invitation or permission.” 47 U.S.C. § 227(a)(4).

14 34. The TCPA provides:

15 Private right of action. A person may, if otherwise permitted by the  
16 laws or rules of court of a state, bring in an appropriate court of that  
state:

17 (A) An action based on a violation of this subsection or the  
18 regulations prescribed under this subsection to enjoin such  
violation,

19 (B) An action to recover for actual monetary loss from such a  
20 violation, or to receive \$500 in damages for each such violation,  
whichever is greater, or

21 (C) Both such actions.

22 47 U.S.C. § 227(b)(3)(A)-(C).

23 35. The TCPA also provides that the Court, in its discretion, may treble  
24 the statutory damages if a defendant “willfully or knowingly” violated Section  
25 227(b) or the regulations prescribed thereunder.

26 36. Defendants’ actions caused concrete and particularized harm to  
27 Plaintiff and the Class, as  
28



- a. receiving Defendants' faxed advertisements caused the recipients to lose paper and toner consumed in printing Defendants' faxes;
- b. Defendants' actions interfered with the recipients' use of the recipients' fax machines and telephone lines;
- c. Defendants' faxes cost the recipients time, which was wasted time receiving, reviewing, and routing the unlawful faxes, and such time otherwise would have been spent on business activities; and
- d. Defendants' faxes unlawfully interrupted the recipients' privacy interests in being left alone and intruded upon their seclusion.

37. Defendants intended to cause damage to Plaintiff and the Class, to violate their privacy, to interfere with the recipients' fax machines, or to consume the recipients' valuable time with Defendants' advertisements; therefore, treble damages are warranted under 47 U.S.C. § 227(b)(3).

38. Defendants knew or should have known that (a) Plaintiff and the other Class members had not given express invitation or permission for Defendants or anyone else to fax advertisements about Defendants' property, goods, or services, (b) Defendants did not have an established business relationship with Plaintiff and the other Class members, (c) the Fax and the other facsimile advertisements were advertisements, and (d) the Fax and the other facsimile advertisements did not display the proper opt-out notice.

39. Defendants violated the TCPA by transmitting the Fax to Plaintiff and substantially similar facsimile advertisements to the other Class members without obtaining their prior express invitation or permission and by not displaying the proper opt-out notice required by 47 C.F.R. § 64.1200(a)(4)(iii).

WHEREFORE, Plaintiff, for itself and all others similarly situated, demands judgment against Defendants, jointly and severally, as follows:

- a. certify this action as a class action and appoint Plaintiff as Class representative;
- b. appoint the undersigned counsel as Class counsel;
- c. award damages of \$500 per TCPA violation per facsimile pursuant to 47 U.S.C. § 227(a)(3)(B);
- d. award treble damages up to \$1,500 per TCPA violation per facsimile pursuant to 47 U.S.C. § 227(a)(3);
- e. enjoin Defendants and their contractors, agents, and employees from continuing to send TCPA-violating facsimiles pursuant to 47 U.S.C. § 227(a)(3)(A);
- f. award class counsel reasonable attorneys' fees and all expenses of this action and require Defendants to pay the costs and expenses of class notice and claim administration;
- g. award Plaintiff an incentive award based upon its time expended on behalf of the Class and other relevant factors;
- h. award Plaintiff prejudgment interest and costs; and
- i. grant Plaintiff all other relief deemed just and proper.

### **DOCUMENT PRESERVATION DEMAND**

Plaintiff demands that Defendants take affirmative steps to preserve all records, lists, electronic databases, or other itemization of telephone or fax numbers associated with the Defendants and the communication or transmittal of advertisements as alleged herein.

DATED: April 12, 2018

EDWARDS POTTINGER LLC

By: /s/ Seth M. Lehrman

Seth M. Lehrman

Attorney for Plaintiff

RYOO DENTAL, INC. d/b/a RYOO DENTAL